Gua.P. 1/2008
BEFORE
THE HON'BLE MR JUSTICE A. K. GOEL
THE HON'BLE MR. JUSTICE P. K. SAIKIA

(Goel,J.)
This appeal has been preferred by the wife under Section 47 of the Guardianship and Wards Act, 1890, against order of the learned District Judge, Tinsukia, inso far the respondent husband has been allowed visiting rights to meet the minors w ho are in custody of the appellant wife. The matter should have been registered as appeal but has been wrongly registered as petition . The office may rectify the error and assign correct description and number as appeal.
Marriage between the parties was performed on 28.04.1993 according to Islamic ri tes. Out of the wedlock, a daughter was born on 24.9.1996 and one son was born o n 30.04.2000. The wife is employed as a teacher. Relationship between the partie s became strained and they were separated. Children continued to live with their mother. The respondent made an application under Section 25 of the Act seeking custody of the children, namely, Nayara Faruk and Adnan Faruk. The application w as contested. After due consideration, it was held that welfare of minor childre n was in their continuing with their mother. The finding recorded is as under :
19. After going through the testimony of the petitioner, I find that the pet itioner has mostly narrated as to how matrimonial relation with the O.P. became sour and strain. PWs 2 and 3 have also supported the petitioner saying that the O.P. left the marital home and snapped the matrimonial relation without any coge nt reason. PW 1 has also alleged that on few occasions, he found physical injuri es on the person of children. However, PW 1 himself has clarified that his child got the injuries due to accidental falling. According to O.P., on one occasion, her son sustained minor injury, when he fell down in the school. In my consider ed opinion, isolated instances of sustaining minor injuries by grown up children are not enough to draw adverse presumption of leading a nomadic life. PW 2 has also deposed that on one occasion, he found the children alone in the quarter an d the door was under lock and key. However, his testimony is not very satisfacto ry in this regard. The witness himself has stated that he saw the children from a distance. PW 2 asserts that he is a good friend of the petitioner and was in t he habit of visiting Digboi alongwith the petitioner. If it was so, PW 2 should have enquired in detail whether the children were at all in trouble. After exami ning the testimony meticulously, I find that this allegation is without any foot ing.

20. The above apart in the midst of the proceeding, I had interviewed both t he minor children personally on 20.07.2004. The children were heard to consider the application for visiting rights of the father. On that occasion, both the ch ildren were found happy with their mother and no complain of mal-treatment and t orture by their mother was made. Even then father was given visiting rights. I d id not consider it necessary to interview the tender aged children again keeping in mind that frequent interview in the Court might pollute and disturb their mi nd. At the same time, no request for second interview of the children was made b y either side.

Accordingly, the custody application was dismissed but the visiting rights given under interim order dated 20.2.2004 were continued to the effect that the husba nd could visit residence of the wife once in a week to meet the children. He co uld also carry one child at a time after 4.00 P.M. of every Saturday and keep th

e child upto 4.00 P.M. of the next day.
The respondent filed an application for review on the ground that long vacation was not taken into account. The said application was partly allowed and it was directed that the husband could take one child for three days at a stretch if the vacation is for two weeks and for five days if the vacation is for longer period.
We have heard Mr. A. S. Choudhury, learned Senior Counsel, appearing for the appellant, and Mr. F. U. Barbhuiya, learned counsel appearing for the respondent.
Learned counsel for the appellant wife states that whatever be the position in the past, during the pendency of this appeal the husband has remarried and has been blessed with more children from the second marriage. This may call for modification of visiting rights. He also points out that during pendency of this appeal the husband was granted order dated 23.07.2009 by the District Judge, Tinsukia, to the effect that interim custody of the children be given as per earlier orders. The said order was stayed by this Court on 18.09.2009 and the stay has been in operation.
Having regard to the facts and circumstances of the case, we are of the view that the issue whether visiting rights should at all have been allowed or not will not require any adjudication, at this stage, as a period of more than five years has passed since the passing of the order by the learned District Judge. We also need not express any final view as to validity of order dated 23.7.2009. The said order has remained stayed and we are giving liberty for passing fresh order. Thus, question, which survives, is for future arrangement in the light of subsequent developments. We are of the view that the parties be given liberty to seek fresh directions by moving the guardianship Court and the guardianship Court may pass fresh appropriate order after considering the rival contentions.
The appeal stands disposed of accordingly.